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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

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Eligibility for the Specialized Mobile
Radio Services and Radio Services
in the 220-222 MHz Land Mobile
Band and Use of Radio Dispatch
Communications)
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GN Docket No. 94-90

DOCKET FILE COPY ORIGINAL

To: The Commission

**OPPOSITION OF BELL SOUTH TO
AMTA'S REQUEST FOR PARTIAL RECONSIDERATION**

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby oppose the Request for Partial Reconsideration and for Clarification of the Commission's *Report and Order*¹ in this proceeding filed by the American Mobile Telecommunications Association, Inc. ("AMTA"). AMTA seeks to reimpose restrictions on dispatch offerings by CMRS providers, returning to the regulatory gamesmanship that Congress and the Commission sought to end.

In its request, AMTA states that it "is not persuaded that the record in this proceeding, or the analysis in the R&O, support the abandonment of the preclusion against the provision of dispatch service on common carrier spectrum."² BellSouth disagrees. Eighteen parties, including BellSouth, submitted comments supporting the Commission's proposal to eliminate

¹ *Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications*, GN Docket No. 94-90, *Report and Order*, FCC 95-98 (released Mar. 7, 1995).

² AMTA Request at 1.

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the prohibition on the provision of dispatch services by common carriers.³ Only six parties supported its retention.⁴ Thus, contrary to AMTA's assertion, there was an ample record for lifting the dispatch prohibition.

AMTA asserts that elimination of the prohibition was not necessary to promote regulatory parity.⁵ AMTA previously made these arguments in its comments and reply comments, however, and presents no new arguments in its reconsideration request.⁶ Further, many of the commenters, including BellSouth, showed that lifting the prohibition would further the statutory objective of regulatory parity.⁷ As BellSouth previously stated, "since SMR providers can compete directly with cellular providers, both providers should be able to offer the same panoply of services in order to establish regulatory parity. Allowing SMR providers and not cellular providers to provide dispatch is inconsistent with this principle."⁸ Thus, the Commission had a

³ Comments of BellSouth at 15-16; McCaw Cellular Communications, Inc. ("McCaw") at 1-2; Century at 10; Polar at 11; Sprint at 2-3; Personal Communications Industry Association ("PCIA") at 1; Rural Cellular Association at 3; ALLTEL Mobile Communications, Inc. ("ALLTEL") at 2-4; East Otter Tail Telephone Company ("East Otter") at 6-7; SNET Mobility at 8; Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") at 5-6; GTE Service Corporation ("GTE") at 7; Southwestern Bell Corporation ("Southwestern") at 7; Rochester Tel Cellular Holding Corporation ("Rochester") at 3; USTA at 1, 3-4; Nextel Communications, Inc. ("Nextel") at 6-7 (supporting elimination at the end of the PMRS to CMRS transition period); Telephone and Data Systems, Inc. at 7; CTIA at 4-7.

⁴ Comments of ITA at 5-6; AMTA at 10-11; SMR WON at ii, 19-20, 22; Geotek at 3; NABER at 4-5; E.F. Johnson Company at 2-3.

⁵ AMTA Request at 3.

⁶ See AMTA Request at 3; Comments of AMTA at 10-12.

⁷ See Comments of PCIA at 1, Polar at 11, ALLTEL at 2-3, East Otter at 6-7, Bell Atlantic at 6, GTE at 7, Southwestern at 7, CTIA at 4-6; Reply Comments of BellSouth at 4.

⁸ See Reply Comments of BellSouth at 4-5; Comments of Southwestern at 7.

full opportunity to address conflicting positions on this issue and concluded, based on the record, that the prohibition should be eliminated in the interest of regulatory parity. AMTA has provided no substantial basis for revisiting this conclusion.

AMTA also argues that Part 22 eligibles should only be allowed to provide dispatch service using Part 90 frequencies.⁹ BellSouth urges the Commission to reject this self-serving position. Requiring the use of a separate frequency for dispatch service would impose substantial costs and waste valuable spectrum, leading to both economic and spectral inefficiency. This would force Part 22 licensees to buy licenses, construct facilities, and deprive customers of economies of scale. Consumers should have the benefit of choosing from existing dispatch providers or new entrants into the dispatch field.

BellSouth also opposes AMTA's request that the Commission recover "excess" spectrum that a cellular provider is able to use for the provision of dispatch service. AMTA's request ignores the fact that the dispatch service that it seeks to ban under Part 22 is virtually indistinguishable from specialized services that cellular carriers have long been authorized to offer.¹⁰ The elimination of the dispatch prohibition merely releases the cellular operator from the obligation to provide all dispatch-like transmissions through its switch. The fact that a carrier is

⁹ AMTA Request at 4.

¹⁰ Although the term "dispatch service" has been used in the private land mobile context to mean service not interconnected with the public switched telephone network, Part 22 defines "dispatch service" very differently -- brief two-way voice communications between a dispatcher and a mobile "without passing through the mobile telephone switching facilities." 47 C.F.R. § 22.2. Thus, non-interconnected services (which would be viewed as dispatch from AMTA's Part 90 perspective, have long been permitted under Part 22, as long as the calls pass through the cellular switch. *See Notice* at ¶ 12 & n.48; 47 C.F.R. § 22.930; *see also* Comments of CTIA at 4-5; Reply Comments of BellSouth at 5 & n. 15.

able to do this does not mean the carrier has "excess" spectrum -- indeed, it more likely means that the carrier has found a way to make its spectrum usage more intensive and efficient.

AMTA's request also would impose substantial resource requirements on the Commission. Instead of the current block allocation licensing system, the FCC would have to maintain licensing records for each individual frequency a cellular carrier may use. This would greatly reduce the efficiency of cellular licensing and would vastly multiply the recordkeeping involved. It also would result in the modification of thousands of licenses on a regular basis, leading to constant litigation. Given the lack of any countervailing benefits, the Commission should reject AMTA's proposal.

Cellular carriers should have "the same flexibility to use their spectrum to meet their customers' needs that the Commission's rules afford SMR and ESMR licensees."¹¹ Allowing common carriers to provide dispatch service only over part 90 frequencies would make it more costly to provide such service than if these licensees could provide the service over spectrum currently licensed to them. Further, in the wake of the 1993 amendments to Section 332, the Commission no longer maintains the kind of regulatory distinctions among services that were formally the case; instead, it licenses the flexible use of blocks of spectrum and allows the market to determine what services are offered. In PCS, for example, parties made similar arguments to those espoused by AMTA -- that carriers should only be allowed to provide a narrowly defined group of services in each different band of spectrum.¹² The Commission

¹¹ Comments of CTIA at 5.

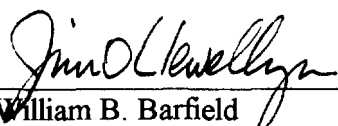
¹² See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7711-12 (1993).


disagreed with these arguments, however, and determined that its rules should allow for the "greatest number of service offerings."¹³ The Commission's approach in the *Report and Order* is consistent with this philosophy. Accordingly, BellSouth opposes AMTA's request to limit the types of services that can be provided over Part 22 spectrum.

Based on the foregoing, BellSouth urges the Commission to affirm its *Report and Order* without modification.

Respectfully submitted,

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¹³ *Id.* at 7712.